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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,629	07/25/2003	Steven J. Jackowski	006267.00002	9627

22907 7590 02/13/2006

BANNER & WITCOFF  
1001 G STREET N W  
SUITE 1100  
WASHINGTON, DC 20001

EXAMINER
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HAMILTON, LALITA M

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 02/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/626,629	JACKOWSKI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Lalita M. Hamilton	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 3-11, 13-21 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-11, 13-21 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>05192005</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### **Request for Continued Examination (RCE)**

The RCE filed on November 23, 2005 has been processed. A non-final action follows below.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-11, 13-21, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson (2002/0095400) in view of Enns (6,658,010).

Johnson discloses a method and corresponding system for managing differentiated service in information management environments comprising implementing a service level agreement in a network having a data consumption quota limitation for each of a plurality of subscribers to the network and responsive to one of the subscribers consuming at least a threshold amount of data, the service level agreement regulating a bandwidth usable over the network by that subscriber (p.27, 237-238); the network includes the Internet (p.2, 11); storing an account for each of a plurality of subscribers, each account having a balance that tracks a network data consumption of the respective subscriber, imposing a bandwidth limitation on a subscriber responsive to the balance of the account of that subscriber dropping below a defined level, and for each account, crediting the balance of the respective account on

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an intermittent basis (p.26, 232 to p.27, 238 and p.40, 326); imposing the bandwidth limitation includes causing an existing bandwidth limitation to be more restrictive (p.26, 232 to p.27, 238 and p.40, 326); crediting is performed on a periodic basis (p.26, 232 to p.27, 238 and p.40, 326); crediting includes crediting the balance of each account by an amount that depends upon the balance of the respective account (p.26, 232 to p.27, 238 and p.40, 326); reducing bandwidth limitation on one of the subscribers responsive to the balance of the account of that subscriber rising about a predetermined level (p.26, 232 to p.27, 238 and p.40, 326); releasing the bandwidth limitation (p.26, 232 to p.27, 238 and p.40, 326); for each of the subscribers, reducing the balance of the account of the respective subscriber by an amount based upon a volume of network data consumption by that subscriber (p.26, 232 to p.27, 238 and p.40, 326); sending information to each of the subscribers indicating the balance of the account of each respective subscriber (p.26, 232 to p.27, 238 and p.40, 326—bill sent to the customer by email, postal mail, etc.); balance for each account is an upstream, downstream, or burst balance (p.26, 232 to p.27, 238 and p.40, 326); imposing the bandwidth limitation includes imposing the bandwidth limitation on the subscriber responsive to the balance of the account that subscriber dropping below a defined level and at further depending upon least one of a time of day and a current network congestion level (p.26, 232 to p.27, 238 and p.40, 326); sending information to the subscriber whether the bandwidth is being regulated (p.40, 326-bill); an apparatus configured to regulate a bandwidth available to one of the subscribers based on whether a predetermined volume of data has previously been consumed by that subscriber (p.27, 237-238); and storing a

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plurality of balances for each of a plurality of subscribers, each balance tracking a different aspect of network data consumption of the respective subscriber, imposing a bandwidth limitation on a subscriber responsive to at least one of the balances of that subscriber dropping below a defined level, and for each subscriber, crediting at least one of the balances of the respective subscriber (p.26, 232 to p.27, 238 and p.40, 326). Johnson does not disclose each account having an upstream and a downstream balance that tracks a wireless network data consumption or imposing a bandwidth limitation on a subscriber of the wireless network responsive to either the upstream or downstream balance of the account. Enns teaches a method and corresponding system for monitoring wireless accesss comprising an upstream and a downstream balance that tracks a wireless network data consumption (col.4, lines 5-40 and col.21 line 50 to col.22, line 15) and imposing a bandwidth limitation on a subscriber of the wireless network responsive to either the upstream or downstream balance of the account (col.4, lines 5-40 and col.21 line 50 to col.22, line 15). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate an upstream and a downstream balance that tracks a wireless network data consumption and imposing a bandwidth limitation on a subscriber of the wireless network responsive to either the upstream or downstream balance of the account, as taught by Enns into the invention disclosed by Johnson, to regulate data consumption.

### ***Response to Arguments***

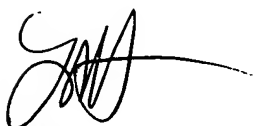
Applicant's arguments with respect to claims 3-11, 13-21, and 23 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lalita M. Hamilton whose telephone number is (571) 272-6743. The examiner can normally be reached on Tuesday-Thursday (8:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



LMH